

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 4:19-cv-00054-YGR

JAMES FABIAN,

Plaintiff,

vs.

COLIN LEMAHIEU, ET. AL.,

Defendants.

ORDER: (1) GRANTING MOTION TO WITHDRAW PLAINTIFF JAMES FABIAN AND MOTION FOR CLASS CERTIFICATION WITHOUT PREJUDICE; (2) DEEMING WITHDRAWN MOTION FOR CLASS CERTIFICATION; AND (3) GRANTING IN PART MOTION TO INTERVENE, LEAVE TO FILE A SECOND AMENDED COMPLAINT, LEAVE TO AMEND THE CAPTION, AND LEAVE TO FILE A RENEWED MOTION FOR CLASS CERTIFICATION

Re: Dkt. Nos. 144, 150, 151

Pending before the Court is plaintiff James Fabian's motion to withdraw without prejudice himself and the motion for class certification, and the motion to intervene, leave to file a second amended complaint, to amend the caption, and to file a renewed motion for class certification, brought by intervenors Craig Clemens, Anan Thamarnan, Alec Otto, Kyle Penn, James Supple, Michael Migliero, Peter Dedes, Jesse Case, Michael Oliver, Robert Ireland, Edward Seimon, Matthew Battistini, and Kadeem Blanchard.

Having considered the parties' briefing, oral argument on October 13, 2020, and for good cause showing including the reasons stated on the record, the Court **GRANTS** the motion to withdraw, **DEEMS WITHDRAWN** the pending motion for class certification, and **GRANTS IN PART** and **DENIES IN PART** the motion to intervene:

1. Plaintiff Fabian will be allowed to withdraw without prejudice to remaining a putative class member.
2. The current pending motion for class certification is withdrawn without prejudice.
3. Intervenor Alec Otto—selected by the intervenors and Fabian as the named plaintiff (Dkt. No. 159)—will be allowed to substitute as plaintiff in lieu of plaintiff Fabian. The request


by all others is otherwise denied.

4. The request for leave to file a second amended complaint is denied given the nature of the allegations and its untimeliness relative to the progress of the case. However, given the change in named plaintiff, pursuant to Federal Rule of Civil Procedure 15(d), plaintiff Otto shall file **within seven days** of this Order a supplement to the complaint to provide new allegations parallel to paragraphs 183 to 196 of the operative complaint setting forth the details of Intervenor Otto's transactions in a manner similar to that of plaintiff Fabian. No other amendments shall be allowed. Defendants shall answer such supplemental allegations **within seven days** of the filing of the supplement.

5. **Within seven days** of the filing of defendants' response, the parties shall jointly file a proposed schedule resetting the deadlines in this matter permitting fact discovery of Otto, as well as the briefing schedule on an anticipated renewed motion for class certification. This Order Terminates Docket Numbers 144, 150, and 151.

IT IS SO ORDERED.

Dated: October 26, 2020


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE